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11  
 12 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN JOSE DIVISION**

14 **PHASE FORWARD INCORPORATED, a )**  
 15 **Delaware Corporation, )**

16 **Plaintiff, )**

17 **v. )**

18 **MARY NOEL ADAMS, individually and )**  
 19 **d/b/a PHASE FORWARD, and PHASE )**  
 20 **FORWARD LLC, a California Limited )**  
**Liability Company, )**

21 **Defendants. )**

**CASE NO. 05-4232 JF (HRL)**

The Honorable Jeremy Fogel

**JOINT PROPOSAL OF TRIAL DATES;  
 REQUEST, STIPULATION,  
 DECLARATIONS AND [PROPOSED]-  
 ORDER RESCHEDULING TRIAL  
 SETTING CONFERENCE**

Scheduled Trial Setting Conference Date:  
 May 16, 2008

Courtroom Three, 5th Floor

22  
 23 Plaintiff Phase Forward Incorporated ("PFI") and Defendants Mary Noel Adams and  
 24 Phase Forward LLC (collectively, the "parties"), by and through their undersigned counsel and  
 25 pursuant to Local Rules 6-1(b) and 6-2, hereby: (1) jointly submit alternative proposed Trial  
 26 Dates for the Court's consideration; and (2) stipulate and jointly request that the Court  
 27 reschedule the pending Trial Setting Conference to any date between May 22, 2008 and June 3,  
 28 2008, inclusive, or such other date as the Court may in its discretion determine.

On April 14, 2008, the Court approved the parties' stipulation of that same date and ordered, *inter alia*, that the parties propose alternative Trial dates for its consideration. See Order of April 14, 2008 (Dkt. No. 87). The Court also scheduled a Trial Setting Conference for May 16, 2008 at 10:30 a.m. See Clerk's Notice of April 15, 2008 (Dkt. No. 88).

The parties jointly propose that Trial in this matter be held the week of September 15, 2008.

I, M. Kelly Tillery, declare as follows:

2. On April 15, 2008, the Clerk's office notified the parties that the Court has scheduled a Trial Setting Conference in this matter to be held on May 16, 2008 at 10:30 a.m. (PDT) in San Jose, California. The notice advised that the parties may appear telephonically.

4. Defendants' counsel has been advised of these facts and has agreed to rescheduling of the Trial Setting Conference to any date between May 22, 2008 and June 3, 2008, inclusive.

6. I agree that the postponement and rescheduling of the Trial Setting Conference will only affect that conference itself, and will otherwise have no appreciable effect on the schedule of this case.

6. I agree that the postponement and rescheduling of the Trial Setting Conference will only affect that conference itself, and will otherwise have no appreciable effect on the schedule of this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief, and that this Declaration was executed at Philadelphia, Pennsylvania on this 24<sup>th</sup> day of April, 2008.

~~M. Kelly~~ Tillery

ex rel.  
M. Kelly  
- Tillery

## DECLARATION OF MATTHEW STAVISH

I, Matthew Stavish, declare as follows:

1. I am an attorney duly admitted to practice law in the State of Maryland. I am also admitted *pro hac vice* to the U.S. District Court for the Northern District of California, Civil Case No. 05-4232 JF (HRL), and in such capacity I serve as Defendants' lead counsel. I have personal knowledge of the facts set forth in this Declaration (unless otherwise indicated) and if called as a witness could and would so testify.

2. On April 24, 2008, counsel for PFI advised me that M. Kelly Tillery, lead counsel for PFI, will be attending a conference in Berlin, Germany from May 13, 2008 to May 21, 2008. Counsel advised that, based on the time-zone differences involved, it would be impracticable for Mr. Tillery to attend telephonically the Trial Setting Conference currently scheduled for May 16, 2008. Counsel advised that Mr. Tillery would be available to attend telephonically beginning on May 22, 2008.

3. As noted in my Declaration of April 9, 2008 (*see* Dkt. No. 86), I serve as lead counsel for plaintiff Rally Manufacturing, Inc. in the case of *Rally Manufacturing, Inc. v. Pylon*

1 *Manufacturing Corp.*, Civ. Action No. 07-21150 Civ. King/Garber ("*Rally Manufacturing*"), an  
2 unrelated Federal patent action currently pending in the Southern District of Florida.

3 4. Trial in *Rally Manufacturing* is scheduled to begin at the beginning of June 2008  
4 and will require my presence in Miami, Florida beginning June 4, 2008. Because of my  
5 obligation to devote substantial time to preparing for trial in *Rally Manufacturing*, I will be  
6 unable to participate telephonically in the Trial Setting Conference in this action unless such  
7 conference is scheduled to be held prior to June 4, 2008. I have advised PFI's counsel of these  
8 facts, and that I agree to rescheduling of the Trial Setting Conference to any date between May  
9 22, 2008 and June 3, 2008, inclusive.

10 5. There have been no previous time modifications to this pending Trial Setting  
11 Conference or any other such conference in this case.

12 6. I agree that the postponement and rescheduling of the Trial Setting Conference  
13 will only affect that conference itself, and will otherwise have no appreciable effect on the  
14 schedule of this case.

15 I declare under penalty of perjury under the laws of the United States that the foregoing  
16 is true and correct to the best of my knowledge, information, and belief, and that this  
17 Declaration was executed at Bethesda, Maryland on this 24 day of April, 2008.

18  
19   
20 Matthew Stavish

21 **STIPULATION**

22 For the reasons set forth above, the parties stipulate to postponing the Trial Setting  
23 Conference for this case, currently scheduled for May 16, 2008 at 10:30 a.m. (PDT), and  
24 further jointly request, respectfully, that the Court reschedule the Trial Setting Conference to be  
25 held on any date between May 22, 2008 and June 3, 2008, inclusive, or such other date as the  
26 Court may in its discretion determine.

Respectfully submitted,

PEPPER HAMILTON LLP

Date: April 24, 2008

By:

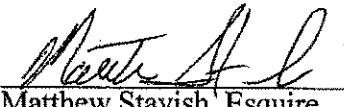
  
M. Kelly Tillery, Esquire  
Attorney for Plaintiff

ex rel.  
M. Kelly  
Tillery

BERENATO, WHITE & STAVISH, LLC

Date: April 24, 2008

By:

  
Matthew Stavish, Esquire  
Attorney for Defendants

**[PROPOSED] ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED that the Trial Setting  
Conference in this case is rescheduled to be held on May 23, 2008 at 10:30 a.m.

DATED: 4/25/08

  
JEREMY FOGEL  
United States District Judge